IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICTION NO.1321 OF 2008
WITH
CIVIL APPLICATION NO.1322 OF 2008
WITH
CIVIL APPLICATION NO.995 OF 2005
WITH
CIVIL APPLICATION NO.347 OF 2006
WITH
CIVIL APPLICATION NO.346 OF 2006
IN
SECOND APPEAL NO.1299 OF 2004

Kashinath Ramchandra Mokal and ors. : Applicants.
Versus
Sudhakar Narayan Mokal and ors. : Respondents.

Mr. A S Rameshan for the Applicants.
Mr.Pradeep M Patil for the Respondent No.1.

CORAM : R M SAVANT, J.
DATE : 04th May 2012

P.C.

1 The above Civil Application Nos.1321/08 and 1322/08 have been filed for restoration of the Civil Application Nos.347/06 and 346/06. The Civil Application No.995/05 has been filed for reinstating the Respondent Nos.5 and 6 as party Respondents. The Civil Application No.347/06 has been filed for bringing the heirs of the Respondent No.5 on record who are Respondent Nos.5A to 5E, and the Civil Application No.346/06 has been filed for bringing the heir of the Respondent No.6 on record who is the Respondent No.6A.

2 Though notices were issued in the above Civil Application Nos.347/06 and 346/06, this was possibly in view of the fact that the Court which issued the notice, was oblivious of the fact that in Civil Application No.237 of 2002 which has been filed for condonation of delay of 2 years and 144 days in filing the Appeal, the learned counsel appearing for the Applicants/Appellants had made a statement that he would delete the Respondent Nos.5 and 6. Accordingly the said Respondents were allowed to be deleted at the risk of the Applicants/Appellants. Thereafter the said Civil Applications were heard and the delay of 2 years and 144 days was condoned on the basis of deleting the Respondent Nos.5 and 6. In view of the said deletion of the said Respondent Nos.5 and 6 in the said Civil Application No.237 of 2002, the Civil Application No.995 of 2005 for their reinstatement is misconceived, as also no notice could have been issued in Civil Application Nos.347 of 2006 and 346 of 2006.

3 In view of the situation arising out of the deletion of the Respondent Nos.5 and 6, the learned counsel for the Applicants submitted that the Applicants desired to apply for reinstatement of the Respondent Nos.5 and 6 and since the said Respondents are already dead, the Applicants would file an appropriate application for the said purpose.

4 It is required to be noted that the said Civil Application Nos.347 of 2006 and 346 of 2006 have been dismissed for non-prosecution on account of a technical reason viz since the service was not effected on the heirs of the original Respondent Nos.5 and 6. The Civil Application Nos.1321 of 2008 and 1322 of 2008 are required to be allowed and are accordingly allowed, resultantly the Civil Application Nos.347 of 2006 and 346 of 2006 are restored to file.

5 On restoration of the said Civil Application Nos.347 of 2006 and 346 of 2006, by consent of the learned counsel for the parties, the same are taken up on board for hearing.

6 The learned counsel for the Applicants seeks withdrawal of the said Civil Application Nos.347 of 2006 and 346 of 2006 along with Civil Application No.995 of 2005 to file an appropriate Application for review of the order dated 11/6/2004 so as to obtain relief of reinstatement of original Respondent Nos.5 and 6 in Civil Application No.237 of 2002, upon which the relief for bringing the heirs of the said Respondent Nos.5 and 6 would only be maintainable. The said Civil Application Nos.347 of 2006, 346 of 2006 and 995 of 2005 are accordingly allowed to be withdrawn with liberty as prayed for. All the above Civil Applications are accordingly disposed of.

[R.M.SAVANT, J]